

1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987); Droege v. Dep't of Information Services, PAB No. D88-024 (Littlemore, Hrg. Exam.), aff'd by Board (1988); Girod v. Dep't of Social & Health Services, PAB No. D91-003 (1991), appeal dismissed, Thurston Co. Super. Ct. No. 91-2-02922-6 (1993); Countryman v. Dep't of Social and Health Services, PAB No. D94-025 (1995); Rainwater v. School for the Deaf, PAB No. D89-004 (1989); Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

II. FINDINGS OF FACT

2.1 Appellant Juanita Dove was an Office Assistant and a permanent employee for Respondent Department of Labor and Industries (L&I). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on November 2, 2000.

2.2 Appellant worked in a production unit. Her primary responsibilities included inputting initial L&I claim information into the computer system. This information was used by claims examiners for processing and paying injured workers' compensation claims.

2.3 Appellant's employment history includes a September 11, 1997, letter of counseling; an October 10, 1997, letter of reprimand; February 4, 1998, reduction in salary; and a May 26, 1998, letter of reprimand. Each of these actions addressed Appellant's failure to report to work, failure to notify her supervisor of her inability to report to work, and failure to follow directives.

2.4 By letter dated September 19, 2000, Douglas Connell, Assistant Director for Insurance Services, notified Appellant of her dismissal for neglect of duty, inefficiency, insubordination, gross

1 misconduct and willful violation of published employing agency or department of personnel rules
2 or regulations as a result of Appellant's continued absenteeism and failure to follow expectations.

3
4 2.5 Appellant was on extended leave from December 7, 1998 to January 15, 2000. She returned
5 to work on January 16, 2000. Upon her return, she was given a letter of expectations. The
6 expectations included:

- 7 • adhering to a 40 hour work week;
- 8 • reporting when she was unable to come to work;
- 9 • requesting advanced approval for the use of annual leave;
- 10 • using emergency leave and unauthorized leave;
- 11 • providing medical documentation for sick leave use;
- 12 • using medical leave for planned appointments; and
- 13 • using unauthorized leave without pay for absences not in compliance with previous
14 expectations.

15
16 2.6 Appellant was also given the opportunity to work a flexible schedule, provided her total
17 work hours each week were equivalent to 40 hours.

18
19 2.7 Between January 28, 2000 and April 14, 2000, Appellant engaged in a pattern of unexcused
20 absences and failure to abide by the letter of expectations. On June 13, 2000, Appellant was given a
21 revised letter of expectations that included a two-month, reduced work schedule. Under her
22 reduced work schedule, Appellant was to work 20 hours per week through July 14, 2000, 30 hours
23 per week through August 11, 2000, and return to 40 hours per week by August 14, 2000.

24
25 2.8 Appellant's attendance did not improve. She continued to engage in a pattern of excessive,
26 unapproved absenteeism and failed to abide by the other provisions of the letter of expectations.

2.9 Between January 18, 2000 and October 4, 2000, Appellant's attendance records indicate that she worked the following percentages of time:

- January 87%
- February 46%
- March 53%
- April 0%
- May 40%
- June 24%
- July 28%
- August 17%
- September 10%
- October 0%

2.10 Douglas Connell was Appellant's appointing authority. He determined that despite the agency's efforts to work with Appellant to improve her attendance, she continued her pattern of excessive absenteeism and failure to comply with expectations. Therefore, Mr. Connell concluded that dismissal was warranted.

2.11 Mr. Connell determined that Appellant neglected her duty to be present at work and perform her assigned job duties; that her continuous failure to keep her supervisor informed of her arrival times created unnecessary work for others and constituted inefficiency; that her failure to comply with the letters of expectations constituted insubordination; that she violated agency policies regarding leave; and that her actions rose to the level of gross misconduct, showed a total disregard for authority and interfered with the accomplishment of the production tasks within her work unit.

2.12 By letter dated September 9, 2000, Mr. Connell notified Appellant of her dismissal, effective October 4, 2000.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that the agency made every effort to assist Appellant and to accommodate her return to a fulltime work schedule. Respondent contends that there was no medical reason why Appellant could not report to work and perform the duties of her position. Respondent asserts that in spite of the agency's efforts to assist her, Appellant failed to live up to the expectations. Respondent argues that Appellant's continued pattern of excessive, unexcused absences and her failure to abide by the letters of expectation warrants the sanction of dismissal.

3.2 Appellant did not provide a defense to the charges nor did she dispute the appropriateness of the disciplinary sanction before the Board.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting the charges upon which the action was initiated by proving by a preponderance of the credible evidence that Appellant committed the offenses set forth in the disciplinary letter and that the sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983).

4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't of Social & Health Services, PAB No. D86-119 (1987).

1 4.4 Inefficiency is a failure to produce the desired effect with the minimum of energy and time.
2 Droege v. Dep't of Information Services, PAB No. D88-024 (Littlemore, Hrg. Exam.), aff'd by
3 Board (1988). It is the utilization of time and resources in an unproductive manner. Girod v. Dep't
4 of Social & Health Services, PAB No. D91-003 (1991), appeal dismissed, Thurston Co. Super. Ct.
5 No. 91-2-02922-6 (1993).

6
7 4.5 Insubordination is the refusal to comply with a lawful order or directive given by a superior
8 and is defined as not submitting to authority, willful disrespect or disobedience. Countryman v.
9 Dep't of Social and Health Services, PAB No. D94-025 (1995).

10
11 4.6 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to
12 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989).

13
14 4.7 Willful violation of published employing agency or institution or Personnel Resources
15 Board rules or regulations is established by facts showing the existence and publication of the rules
16 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the
17 rules or regulations. A willful violation presumes a deliberate act. Skaalheim v. Dep't of Social &
18 Health Services, PAB No. D93-053 (1994).

19
20 4.8 Under the totality of the undisputed facts and circumstances presented here, Respondent has
21 met its burden of proving the charges in the disciplinary letter and has proven that the disciplinary
22 sanction of dismissal is appropriate. Therefore, the appeal should be denied.

23 24 **V. ORDER**

25 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Juanita Dove is denied.

26
Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504
(360) 586-1481

1 DATED this _____ day of _____, 2002.

2 WASHINGTON STATE PERSONNEL APPEALS BOARD

3
4 _____
Walter T. Hubbard, Chair

5
6 _____
Gerald L. Morgen, Vice Chair

7
8 _____
René Ewing, Member

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26